

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R.No.1113 of 2005
Date of Decision 20.9.2007

Harminder Kaur

....Petitioner

Vs.

Mohinder Kaur

.... Respondents

Present: Mr.M.K.Singla, Advocate for the petitioner.

Vinod K.Sharma, J. (Oral).

The present revision petition has been filed against the order dated 5.2.2005 passed by the learned Additional District Judge, Fast Track Court Sangrur, vide which application moved by the plaintiff/petitioner under Order 6 Rule 17 CPC read with Order 1 Rule 10 CPC and Section 151 of the Code of Civil Procedure for amendment of the plaint by adding the vendees of the sale deed executed by Mohinder Kaur-respondent has been ordered to be dismissed.

The petitioner-plaintiff claims that during the pendency of the suit, defendant-Mohinder Kaur sold her share in the suit land on 22.7.2002 to Ram Singh, Surjit Singh and Ranjit Singh on the basis of sale deed and the aforesaid persons are now necessary and proper parties. It has been claimed that in the event of suit being decreed, it would be difficult for the plaintiff-petitioner to get possession of the suit land. It has been further pleaded in the application that addition of their names as respondents-defendants shall avoid multiplicity of the proceedings. It is admitted that property was sold by a registered sale deed on 22.7.2002.

The application was contested on the plea that pendente lite purchasers could not be impleaded as defendants under Order 1 Rule 10 CPC as the property was sold during the pendency of the suit especially when the alienation was hit by the Doctrine of lis-pendens by the operation of Section 52 of the Transfer of Property Act. In support of this contention, reliance was placed before the lower Court by the learned counsel for the respondents on the judgment of this Court in case of **M/s Wimco Limited vs. Horam and others 2004(1) Civil Court Cases 575** wherein this Court was pleased to hold that vendee, who had purchased the suit property during the pendency of the litigation is not a necessary party. The learned Additional District Judge after observing that in view of the provision under Order 22, Rule 10 CPC where a subsequent vendee is to be substituted, came to the conclusion that an application under Order 1 Rule 10 was not competent, therefore, dismissed the application.

Learned counsel appearing on behalf of the petitioner contends that the learned court below erred in dismissing the application by placing reliance on the judgment of this Court in case of **M/s Wimco Limited vs. Horam and others (supra)**. Learned counsel for the petitioner claimed that the said authority was in his favour as in the said case, the order passed by the learned trial Court rejecting the application for being impleaded as a party, was set aside and revision petition was allowed by treating the application to be under Order 22 Rule 10 of the Code of Civil Procedure applying the doctrine of lis-pendens and the vendees were allowed to defend the suit on behalf of the vendor.

Learned counsel for the petitioner further placed reliance on the judgment of Hon'ble Supreme Court in the case of **Dhanalakshmi and**

others vs. P.Mohan and others, 2007 (1) RCR (Civil) 887, wherein the Hon'ble Supreme Court has been pleased to hold that the person purchasing undivided shares of some of co-sharers during the pendency of the suit are entitled to be impleaded as parties in the pending suit. The learned counsel for the petitioner therefore, pleaded that this authority is fully applicable to the present case, as in the present case also share of one of the co-sharers has been sold to the persons, sought to be impleaded as party by way of present application.

He also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Amit Kumar Shaw & another vs. Farida Khatoon and another, 2005(2) RCR (Civil) 651** wherein the Hon'ble Supreme Court has been pleased to lay down that the transferee pendente lite can be added as a property party if his interest in the subject matter of the suit is substantial. Learned counsel for the petitioner has raised a plea that even for the sake of arguments, if the vendees are not treated necessary party, yet they are proper party, therefore, it would not have affected the interest of any party therefore, the application should have been allowed.

In spite of notice having been issued, nobody has appeared on behalf of the respondents to contest this revision petition. Consequently, for the reasons stated above, this revision petition is allowed, the impugned order is set aside and the application moved by the petitioner under Order 1 Rule 10 CPC is allowed with no order as to costs.

[Vinod K.Sharma]
Judge

20.09.2007
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